

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN J. TORPEY, JOHN ENRIGHT
CHRISTOPHER SHEERAN, PATRICK DOLAN,
JR., PATRICK NORTON, VINCENT J.
CURRAN, JR., ROBERT EGAN, JR., WILLIAM
WANGERMAN, RAYMOND DEAN, JR.,
JOHN O'CONNELL, JAMES ELDER,
RAYMOND HOPKINS, EDWARD ENGLISH,
ROCCO ABBATE, ARTHUR KLANSKY,
JOHN DIERKS, JEFF PORRELLO, RICHARD
THOMPSON, TERENCE FARRELL, DONALD
BURNS JOHN KRITIS, and WILLIAM
McMORROW, SR., as TRUSTEES OF THE
STEAMFITTERS LOCAL 638 PENSION FUND,
SUPPLEMENTAL RETIREMENT FUND,
SECURITY BENEFIT FUND, VACATION FUND,
AND EDUCATION FUND, and ENTERPRISE
ASSOCIATION OF PIPE FITTERS AND
APPRENTICES OF GREATER NEW YORK,
NASSAU AND SUFFOLK COUNTIES, AND
VICINITY LOCAL 638 OF THE UNITED
ASSOCIATION OF JOURNEYMEN AND
APPRENTICES OF THE PLUMBING AND PIPE
FITTING INDUSTRY OF THE UNITED STATES
AND CANADA, AFL-CIO

Plaintiffs,

-against-

TM & M MECHANICAL CORPORATION,
TM & M SPRINKLER CORP., and TRI-STATE
FIRE PROTECTION CORPORATION,

Defendants.

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Civil Action No. 08 CIV 4381

(RMB)
(FM)

ANSWER, AFFIRMATIVE
DEFENSES AND JURY DEMAND
OF DEFENDANT, TM & M
SPRINKLER CORP.

ECF FILING

Defendant, TM & M SPRINKLER CORP., ("TM & M Sprinkler"), through its attorneys, DE

LUCA & FORSTER, by way of answer to the complaint herein, respectfully shows and alleges:

JURISDICTION AND VENUE

1. Denies the allegations contained in paragraph "1" of the complaint.
2. Denies the allegations contained in paragraph "2" of the complaint.

NATURE OF THE ACTION

3. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "3" of the complaint.
4. Admits, upon information and belief, the allegations contained in paragraph "4" of the complaint.
5. Admits the allegations contained in paragraph "5" of the complaint except states that this defendant is an inactive corporation.
6. Denies the allegations contained in paragraph "6" of the complaint.
7. Denies the allegations contained in paragraph "7" of the complaint.
8. Denies the allegations contained in paragraph "8" of the complaint.
9. Denies the allegations contained in paragraph "9" of the complaint.
10. Denies the allegations contained in paragraph "10" of the complaint.

ANSWERING THE FIRST CAUSE OF ACTION

11. TM &M Sprinkler repeats its responses to the allegations contained in paragraphs "1" through "10" of the complaint as if set forth herein at length.
12. Denies the allegations contained in paragraph "12" of the complaint.
13. Denies the allegations contained in paragraph "13" of the complaint.

14. Denies the allegations contained in paragraph "14" of the complaint.
15. Denies the allegations contained in paragraph "15" of the complaint.
16. Denies the allegations contained in paragraph "16" of the complaint.
17. Denies the allegations contained in paragraph "17" of the complaint.
18. Denies the allegations contained in paragraph "18" of the complaint.

ANSWERING THE SECOND CAUSE OF ACTION

19. TM &M Sprinkler repeats its responses to the allegations contained in paragraphs "1" through "18" of the complaint as if set forth herein at length.
20. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph "20" of the complaint.
21. Denies the allegations contained in paragraph "21" of the complaint.
22. Denies the allegations contained in paragraph "22" of the complaint.
23. Denies the allegations contained in paragraph "23" of the complaint.
24. Denies the allegations contained in paragraph "24" of the complaint.

ANSWERING THE THIRD CAUSE OF ACTION

25. TM &M Sprinkler repeats its responses to the allegations contained in paragraphs "1" through "24" of the complaint as if set forth herein at length.
26. Denies the allegations contained in paragraph "26" of the complaint.
27. Denies the allegations contained in paragraph "27" of the complaint.
28. Denies the allegations contained in paragraph "28" of the complaint.

ANSWERING THE FOURTH CAUSE OF ACTION

29. TM &M Sprinkler repeats its responses to the allegations contained in paragraphs "1"

through "28" of the complaint as if set forth herein at length.

30. Denies the allegations contained in paragraph "30" of the complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. This Court does not have jurisdiction over this defendant in that there is no diversity of citizenship between the parties and there is no other basis upon which the Court may obtain jurisdiction over this defendant.

SECOND AFFIRMATIVE DEFENSE

1. The amount in controversy between this defendant and the plaintiffs is not sufficient for this Court to obtain jurisdiction over this defendant.

THIRD AFFIRMATIVE DEFENSE

1. There is no privity of contract between this defendant and Local 638 as a result of which this defendant cannot be held liable to the plaintiffs for any of the damages that they seek herein.

WHEREFORE, defendant, **TM & M SPRINKLER CORP.** demands judgment dismissing the complaint together with costs, disbursements, attorneys fees and such other and further relief which the Court deems just and proper.

JURY DEMAND

This defendant demands trial by jury of all issues so triable.

Dated: June 20, 2008
Valatie New York

DE LUCA & FORSTER

A handwritten signature in cursive script, appearing to read "Thomas G. De Luca", is written over a horizontal line.

Thomas G. De Luca (TDL-6312)
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